

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4975 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SHARMILABEN WD/O KAMLESHBHAI LALAJIBHAI KHALASI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR BC DAVE for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

#### ORAL JUDGEMENT

1. The petitioner was detained under PASA by virtue of an order passed by the Commissioner of Police, Surat city, Surat on 8th March 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act']. The detaining authority took into consideration five registered offences against the petitioner and statements of three witnesses and then arrived at a subjective satisfaction that the petitioner

is a bootlegger. He is involved in activities which is detrimental to public order. Resorting to a less drastic remedy is not possible and it is necessary to detain the petitioner under PASA in order to immediately prevent her from pursuing her illegal and anti social activities.

2. The petitioner has challenged detention mainly on the ground of delay in passing the order and secondly on the ground of non-supply of relevant documents though demanded.

3. Mr.B.C.Dave, learned advocate for the petitioner submitted that the petitioner came to be detained by an order dated 8th March 1999. The statements of witnesses were recorded on 5th and 6th February 1999. They relate to offences dated 25th December 1999, 17th January 1999 and 26th January 1999. The statements came to be verified on 5th March 1999 and the order was passed on 8th March 1999.

4. Mr.Dave, learned advocate therefore submitted that there was a lapse of about six weeks between the last unregistered offence dated 26th January 1999 and the order of detention dated 8th March 1999. Therefore, the subjective satisfaction for immediate need of detaining the petitioner is not genuine. He submitted that in any case, the authorities were aware about these offences latest by 6th February 1999 and the statements were verified on 5th March 1999. Here also, there is a lapse of precisely 1 month which is not explained by the authority and therefore, the subjective satisfaction cannot be said to be genuine.

Mr.Dave submitted that the petitioner made a demand for certain documents particularly report from the Forensic Science Laboratory [FSL] in respect of the offence registered against her. The State Government in its reply dated 2nd August 1999 stated that instructions were issued to the Commissioner of Police, Surat for furnishing such reports, but the same have yet not been supplied to the petitioner. Mr. Dave therefore submitted that non-supply of documents has resulted into a denial of a right of making an effective representation which is guaranteed by the Constitution of India. He submitted that the petition may therefore be allowed.

5. Mr.H.H.Patel, learned AGP submitted that there is some delay, but it cannot be considered as sufficient to vitiate the detention. As regards the supply of documents, he submitted that it is true that demand was made and it is equally true that the report of the FSL

has not been supplied to the petitioner.

6. Exfacie, the petition deserves to be allowed on the ground of non-supply of documents. As conceded to by Mr.Patel, AGP, the documents, though demanded by the petitioner, and though directed to be supplied by the Government, have not been supplied to the detenue by the detaining authority. This has affected petitioner's right of making an effective representation and therefore, the detention would stand vitiated.

7. At this stage, Mr. Dave, learned advocate, does not press for verdict on the other ground.

8. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Surat city, Surat on March 08, 1999, in respect of the petitioner Sharmilaben wd/of Kamleshbhai Lalajibhai Khalasi, is hereby quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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